IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11259 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

HEIRS & LEGAL REPRESENTATIVES OF DECD. KASHIBEN LALLUBHAI

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioners

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 23/03/99

ORAL JUDGEMENT

1. Heard learned counsel.

2. This Special Civil Application is directed against the order dt.29.10.98 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN/B.A./764/93 dt. 29.10.98 whereby the Revision Application was rejected. The petitioners claiming to be

the legal heir of Kashiben Lallubhai Patel have raised a grievance that the entitlement of one more unit in their favour was not considered by the authorities under the Gujarat Agricultural Lands (Ceiling of Holdings) Act. This is the second round of litigation. In the first round, the matter had been contested upto Gujarat Revenue Tribunal which passed the order on 12.12.96. Aggrieved from this order dt.12.12.96 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN/B.A./764/96 Special Civil Application No.832/97 was preferred before this Court. This Court decided the said Special Civil Application on 17.9.97 and remanded the mater back to the Gujarat Revenue Tribunal on the ground that the question of entitlement of one more Unit had not been considered by the Tribunal and, therefore, the order dt.12.12.96 passed by the Gujarat Revenue Tribunal was set aside and the Tribunal was directed to hear and decide the revived proceedings on the aspect as to whether the petitioners were in any way entitled to one more Unit or not. Thereafter, the Gujarat Revenue Tribunal has passed the impugned order dt.29.10.98. The Tribunal has considered that the entitlement of one more unit is claimed on the ground that the petitioner - Keyurbhai Lallubhai Patel was adopted by Kashiben on 12.1.90, whereas the position is to be seen as on 1.4.76 and, therefore, there was no entitlement for one more unit. The learned counsel for the petitioner has submitted that the petitioner No.1/1 was taken in adoption in fact at the time when he was 10 years old and it has been submitted that the petitioner No.1/1 was born in 1965 and, therefore, he had been taken in adoption in 1975 and merely because the adoption deed has been registered in 1990, the entitlement of one more unit has been wrongly denied.

3. I have considered the aforesaid argument raised by the learned counsel for the petitioners and have also gone through the impugned order passed by the Revenue Tribunal and the other relevant documents, which are available on record. The Tribunal has categorically mentioned in para 6 of the impugned order dt.29.10.98 that Kashiben herself had filed an affidavit before the Mamlatdar and the Form in which she had given out the details of the lands held by her. These details were disclosed by her on 29.6.76 and even at that time i.e. on 29.6.76 she did not disclose any fact with regard to the adoption as is claimed by the petitioners. There was no mention about the adoption in these details. It is, therefore, clear that had the petitioner No.1/1 been adopted in 1975, as is being claimed today before this Court, Kashiben would not have missed to make the mention and disclose the factum of adoption in the details, which

she gave out in June 1976. Further more, the copy of the adoption deed itself has been placed on record by the petitioners as Annexure 'B' with this Special Civil Application. This adoption deed also does not mention any where that the adoption had in fact taken place in the year 1975 or at any point of time before 1.4.76 and the date of registration of this adoption deed is 9.1.90. All that has been said in para 5 of this adoption deed is that after the death of the natural father of petitioner No.1/1 he was living with Kashiben and was getting such love and affection from her as he used to get from his natural mother and further that Kashiben had desired since long to take him in adoption and for that purpose the formalities had taken place and only registration remained to be done, which is being done now. On the basis of the mention made in this adoption deed, as aforesaid, it cannot be said that the adoption had in fact taken place in 1975 or at any point of time prior to 1.4.76. It also does not mention as to exactly at what point of time the adoption took place. Merely because it is mentioned in this document that Kashiben desired since long to take him in adoption and that the formalities had taken place, it cannot be made out as to at what point of time the adoption had taken place. In such matters, the claims cannot be decided on the basis of oral averments or conjectures or surmises. In order to establish the lawful claim for this second Unit, it should have been proved on record as a positive fact that adoption had taken place prior to 1.4.76. A person may carry a desire to take somebody in adoption for any number of years. In the present case when there is a registered adoption deed of 1990, which itself does not disclose that the adoption had taken place at a certain point of time in past and prior to 1.4.76, the rights on the basis of the adoption deed could not be made to flow prior to the registration of the adoption deed. The learned counsel for the petitioners has also made a reference to the Will, which was executed by the husband of Kashiben which bears the date of 14.2.46 and he has submitted that in that Will her husband had expressed a desire that Kashiben - his wife may take one of his nephews in adoption and that petitioner No.1/1 is the nephew of Kashiben's husband. That may be so, but it does not go to establish in any manner that the adoption had taken place in 1975 or prior to 1.4.76. Even in this adoption deed no time limit has been fixed for the purpose of taking the nephew in adoption. Not only that in the whole petition there is no averment that in the Form in which the details had been disclosed by Kashiebn on 29.6.76, the factum with regard to adoption of petitioner No.1/1 prior to 1.4.76 or in 1975 had been mentioned. The learned counsel for

the petitioners referred to para 3.10 of petition at page 13. The portion to which the reference was made reads as under:-

"The learned Tribunal considered the fact that in the form that was filled in details of adopted son were given."

In this regard it was pointed out to the learned counsel for the petitioners that the above mentioned matter do not lend any strength and does not make any sense so far as the contention raised by the petitioners is concerned. Faced with this situation, the learned counsel for the petitioners has submitted that there is some typographical error and that he may be permitted to amend the petition. In the opinion of this Court, there is no question of any amendment. Even if it is assumed that there is any typographical error and what the petitioners actually meant was to say that the Tribunal had erred in observing that in the disclosure dt.29.6.76 the details of adopted son had not been given, there is nothing on record to sustain this sort of plea. The Form dt.29.6.76 is not on record. The same is also not available with the petitioners' counsel and on the demand of the Court, the same was not produced. In such circumstances, when it is clearly discernible that there is no cotemporaneous evidence on record in support of the petitioners' case that adoption had taken place prior to 1.4.76, the Tribunal's order cannot be interfered with. The basic and foundational fact was adoption prior to 1.4.76. There is no factual foundation either in the body of the petition or it is made out from any other documents on record that adoption had in fact taken place prior to 1.4.76 or in the year 1975 as alleged by the petitioners. I do not find any reason to interfere with a well considered finding of the Revenue Tribunal based on the document dt.29.6.76 which was there for consideration before the Tribunal and on the basis of which the Tribunal has made a categorical mention that in the disclosure dt.29.6.76 there was no factual mention about the adoption. The Tribunal's order does not suffer from any error of fact or law which can be said to be apparent on the face of the record and hence no case is made out for any interference in this writ of certiorari.

4. Even at this stage, the learned counsel for the petitioners wanted to raise certain other points, which had already been decided earlier by the Tribunal in its order dt.12.12.96. The order dt.12.12.96 had been challenged before this Court and the order passed by this court in Special Civil Application while remanding the matter back to the Tribunal is very specific as is clear

from the order itself- the relevant portion of which is reproduced as under:-

"Accordingly the order passed by the Revenue Tribunal in Revision Application No.TEN/B.A./764 of 1996 dt.12/12/1996 is set aside and the Tribunal is directed to hear and decide the revived proceedings on the aspect as to whether the petitioners were in any way entitled to one more Unit." (emphasis supplied)

In this view of the matter, the petitioners cannot be allowed to raise those questions which already stand concluded and which were beyond the scope of consideration of the proceedings remanded to the Tribunal by this Court. This Court's order dt.17.9.97 has already attained finality and the Gujarat Revenue Tribunal while considering the remanded proceedings could not have gone into other matters and in fact one find that the points, which the learned counsel for the petitioners wanted to raise again before this Court, were not even urged before the Gujarat Revenue Tribunal as also in the remanded proceedings in which the present impugned order dt.29.10.98 has been passed. In such a situation the petitioners cannot even raise the contention that their other points should have been considered by the Gujarat Revenue Tribunal or that even if they were not raised before the Tribunal in the remanded proceedings, they have a right to raise the same again before this Court.

5. This Special Civil Application has no merit and the same is hereby dismissed in limine.

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